

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the matter of:

Gregory Harris,

Debtor. /
Michael A. Stevenson, Trustee,

Plaintiff,

vs.

Tony L. Runnels,

Defendant. /

Case No. 03-59612-MBM
Chapter 7
Hon. Marci B. McIvor

Adv. Pro. No. 05-5432

OPINION GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION

On July 14, 2006, the Court held a trial in the above referenced adversary proceeding. On July 18, 2006, the Court granted judgment in favor of Plaintiff against Defendant in the amount of \$33,375.00 on Count I of Plaintiff's Complaint, (Count I alleged violations of 11 U.S.C. §§ 547 and 550); and judgment in favor of Plaintiff against Defendant on Count IV of Plaintiff's Complaint in the amount of \$31,991.08, (Count IV alleged violations of 11 U.S.C. §§ 548 and 550). On July 27, 2006, Plaintiff filed its Motion for Reconsideration of Entry of Judgment. Plaintiff's Motion seeks only reconsideration of the Court's ruling with regard to Count IV of Plaintiff's Complaint.

For the following reasons, the Court grants Plaintiff's Motion for Reconsideration.

On November 18, 2002, Gregory Harris, Debtor, entered into a purchase agreement with Defendant, Tony Runnels, whereby Debtor agreed to sell Defendant an apartment building located at 2740 Richton, Detroit, Michigan (the building). The purchase agreement

provided for payment of \$750,000.00 to Debtor. The purchase agreement provided that the closing on the sale of the building would take place on June 9, 2003.

The closing on the building took place on June 11, 2003. The Closing Statement, dated June 11, 2003, states that the "contract sales price" for the building was \$575,000.00. The closing statement also contains a line item: "cash from borrower - \$96,608.08". This amount reflected the sales price, plus certain adjustments, less the amount received from Defendant.

In the Joint Final Pre-Trial Order, entered with this Court on July 14, 2006, the parties stipulated that "Defendant never paid the Debtor \$96,608.08 of the purchase price" and "the fair market value of the Building on the Sale Date was at least \$575,000.00." (Joint Final Pre-trial Order, Paragraphs IV.G, and IV. I.). The Joint Final Pretrial Order also stated that an issue of fact to be litigated was "the value of the building on the date of sale." (Joint Final Pre-Trial Order, Paragraph V. C.)

At trial, Defendant testified that he did not pay Debtor \$575,000.00 for the purchase of the building, because on the date of sale, the building was no longer worth that price. Defendant also testified that there were no written or oral modifications to the written agreement or closing statement. Defendant testified that he did not bring any money to the closing because he did not anticipate that any additional money was necessary for the closing to take place. Defendant confirmed that he never paid Debtor the \$96,608.08 shown on the closing statement as "cash from borrower".

At the conclusion of the trial the Court ruled that Defendant's failure to pay \$96,608.08 was not a fraudulent transfer because neither Defendant (purchaser), nor Debtor (seller) anticipated that Defendant would pay that amount as consideration for the

property. The Court ruled that “reasonably equivalent value” for purposes of 11 U.S.C. § 548(a)(1)(B)(i)¹ was \$478,391.92, the amount Defendant paid, and Debtor accepted, at closing. However, since that figure included closing costs paid by Debtor, the Court held that closing costs paid by Debtor constituted a fraudulent transfer, and awarded summary judgment to Plaintiff in the amount of the closing costs of \$31,991.08. Therefore, the Court ruled that Plaintiff was entitled to judgment on its fraudulent transfer count in the amount of \$31,991.08.

Plaintiff argues in its Motion for Reconsideration that the Court’s failure to award Plaintiff judgment in the amount of \$128,599.16 (\$31,991.08 plus \$96,608.08) is palpable defect.

Motions to alter or amend a judgment are controlled by L.B.R. 9024-1 (E.D.M.). That rule states:

(c) Grounds. Generally, and without restricting the discretion of the Court, a motion for rehearing or reconsideration which merely presents the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

¹11 U.S.C. § 548 states:

(a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily-

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; . . .

In its brief in support of its Motion for Reconsideration, Plaintiff argues that because Defendant stipulated in the Joint Final Pretrial Order that the fair market value of the building at the time Debtor sold it to Defendant was \$575,000.00, that stipulation requires that the Court find that \$575,000.00 constitutes “reasonably equivalent value” for purposes of 11 U.S.C. § 548(a)(1)(A), (B)(i). There are two problems with the Trustee’s argument. First, the Joint Final Pretrial Order also stated that an issue of fact to be litigated was “the value of the building on the date of the sale”. Thus, the Joint Final Pretrial Order is less than clear on whether Plaintiff and Defendant actually agreed on the “value” of the building on the date of the sale. Second, neither Plaintiff nor Defendant introduced the testimony of an appraiser to provide evidence as to the appraised value of the building on the date of sale.

The Trustee argues that Sixth Circuit case law as applied to these facts requires that this Court grant the Trustee’s Motion for Reconsideration. The Trustee quotes from *In re Canyon Systems Corp.*, 343 B.R. 615, 639 (Bankr. S.D. Ohio 2006) as follows:

A fundamental element of a constructive fraudulent transfer claim is a transfer made in exchange for less than reasonably equivalent value. (citations omitted.) In determining whether a challenged transfer is supported by reasonably equivalent value, courts generally compare the value of the property transferred with the value of that received in exchange for the transfer. See, e.g., *Aristocrat Lakewood Nursing Home v. Mayne*, 133 Ohio App.3d 651, 729 N.E.2d 768, 778 (1999).

The Court agrees with the Trustee’s statement of the law. The problem in the instant case is that there is no solid evidence as to the value of the property transferred on the date of the closing. For the reasons stated above, the Court cannot find that the stipulation regarding the fair market value of the property is binding upon the Court for the

purposes of determining the value of the property as of the date of sale.

Given the lack of appraisal testimony, the issue before the Court on Plaintiff's Motion for Reconsideration, is whether there is sufficient evidence on the record to sustain Plaintiff's argument that \$575,000 is the value of the property transferred on the date of the sale. In reviewing the record, the Court finds that the only written evidence of the sales price on the date of sale is the contract sales price of \$575,000.00, stated in the closing statement.

In its bench opinion, the Court stated that it found Defendant's testimony as to why he paid less than the contract sales price for the building, to be credible. However, Defendant produced no independent testimony or appraisals to verify his testimony that the actual value of the property had decreased \$96,608.08. Defendant simply testified that Defendant did not intend to pay, nor did Debtor anticipate receiving the \$96,608.08 balance reflected on the closing statement.

On reconsideration of the entire record, the Court finds that Defendant's testimony is insufficient to counter the evidence in the closing statement that the agreed upon purchase price, and actual value of the property, was \$575,000.00. The closing statement indicates that the balance owed by the borrower to the seller, Debtor, is \$96,608.08. Defendant made no attempt at closing to amend or modify the closing statement and Defendant never paid the amount required by the closing statement. The Court's failure to find that the closing statement was the best evidence of the value of the property transferred, was palpable defect. The best evidence of the value of the property transferred on the date of sale, is the contract sales price of \$575,000.00. Since Defendant failed to ever pay the Debtor either the balance on the contract of \$96,608.08, or the seller

paid closing costs (which the Court already awarded to Plaintiff), the Court grants the Trustee's Motion for Reconsideration.

For the reasons set forth above, the Court finds that the "reasonably equivalent value" of the building on the date of sale, June 11, 2003, was \$575,000.00. Plaintiff is entitled to judgment against Defendant on Count IV of its Complaint in the amount of \$128,599.16. The Court will enter an amended judgment reflecting this Opinion.

Entered: August 29, 2006

/s/ Marci B. McIvor

Marci B. McIvor

United States Bankruptcy Judge